

**Article 1: Public Improvement and Assessment Proceedings****Division 19: Assessment Deferrals For Low-Income Property Owners****§61.1900 Purpose And Intent**

The purpose and intent of this Division is to provide qualified low-income owners with an alternative method for payment of special assessments levied against their real property. The Council finds and declares that state special assessment laws and city procedural ordinances providing for payments of assessments and bonds in lump sums or in annual installments often results in financial hardship to low-income owners and, in the exercise of the Council's charter power to make suitable provision for the aid and support of the poor, determines that it is in the public interest for the City to provide a method for the deferral of payment of special assessments levied against the real property of qualified low-income owners until such time as the property is transferred or refinanced. The Council further finds and declares that all expenditures and investments made pursuant to this Division are incidental to the accomplishment of the primary purpose of making suitable provision for the aid and support of the poor.

*("Purpose And Intent" added 10-26-1977 by O-12196 N.S.)*

**§61.1901 Inconsistencies with State Law**

This Division is adopted pursuant to the City's charter powers to make and enforce all ordinances and regulations in respect to municipal affairs. To the extent of any inconsistencies between the provisions of this Division and those of the 1911 Act, 1913 Act, or other state law, the provisions of this Division shall control.

*("Inconsistencies with State Law" added 10-26-1977 by O-12196 N.S.)*

**§61.1902 Scope Of Assessment Deferral**

This Division is limited to qualified low-income owners residing within The City of San Diego and 1911 Act and 1913 Act proceedings providing for the issuance of bonds to represent unpaid assessments either under (a) the Improvement Act of 1911 (commencing with Section 5000 of the Streets and Highways Code) or (b) the San Diego Improvement District Procedural Ordinance of 1982. (San Diego Municipal Code section 61.230, et seq.) There are no age restrictions for qualified low-income owners. This Division applies to both pending and completed special assessment proceedings.

*(Amended 10-24-1983 by O-16065 N.S.)*

**§61.1903 Definitions**

The meaning of the various terms, as used in this Division, shall be as follows:

- (a) 1911 ACT means the Improvement Act of 1911 (commencing with Section 5000, Streets and Highways Code) and any other special assessment act or procedural ordinance providing for an earlier hearing on the resolution of intention and a separate and later hearing on the assessment.
- (b) 1913 ACT means the Municipal Improvement Act of 1913 (commencing with Section 10000, Streets and Highways Code) and any other special assessment act or procedural ordinance providing for a single combined hearing upon the resolution of intention and the assessment.
- (c) APPLICANT means the person or persons filing an application for assessment deferral or whose application has been finally approved by the Department.
- (d) ASSESSMENT BOND means an obligation to pay money at a definite time or times, issued or to be issued, to represent an unpaid assessment pursuant to the provisions of the Improvement Act of 1911 (commencing with section 5000 of the California Streets and Highways Code) or the San Diego Improvement District Procedural Ordinance of 1982. (San Diego Municipal Code section 61.2300, et seq.)
- (e) ASSESSMENT DEFERRAL FUND has the meaning set forth in Section 61.1904.
- (f) BOND AGREEMENT has the meaning set forth in Section 61.1911.1.
- (g) CITY means The City of San Diego.
- (h) CITY MANAGER means the City Manager and any officer, department, or division of the city designated by him for the administration of this Division.
- (i) COMPLETED PROCEEDING means a special assessment proceeding in which assessment bonds have been delivered by the City to the person or persons entitled thereto.
- (j) INCOME means all income of any nature from any source derived, including, but not limited to, salaries, wages, dividends, interest, capital gains, rents,

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income from the operation of a farm or business, income from the sale or exchange of property, gifts, inheritances, Social Security payments, other retirement benefits, welfare benefits, alimony and support payments and any other thing of economic value.

- (k) **LOW-INCOME OWNER** means an owner (i) whose income is within the guidelines for low-income citizens and families set by the United States Department of Housing and Urban Development, Economic Marketing Analysis Division, as adjusted annually for the San Diego Metropolitan Statistical Area and (ii) whose net assets do not exceed \$10,000.
- (l) **MORTGAGE** means a mortgage deed, a deed of trust, or any other instrument which constitutes a lien on real property.
- (m) **NET ASSETS** means all real and personal property of any character which a low-income owner owns or has an interest in, including stocks, bonds, and savings accounts but excluding the real property subject to assessment deferral.
- (n) **OWNER** means the person or persons owning and occupying real property in The City of San Diego which is subject to special assessment pursuant to the 1911 Act or 1913 Act and successors in interest or the legally appointed representatives of such person or persons.
- (o) **PENDING PROCEEDING** means a special assessment proceeding in which the resolution of intention has been adopted but the assessment bonds have not been delivered by the City to the person or persons entitled thereto.
- (p) **REFINANCING** means any new indebtedness incurred by an owner after delivery to the City of a bond agreement or a mortgage pursuant to this Division and any extension, modifications, or additional advances made upon any indebtedness previously incurred by an owner, where such indebtednesses are secured by a mortgage on all or any part of the real property in which the City has a security interest.
- (q) **SAN DIEGO IMPROVEMENT DISTRICT PROCEDURAL ORDINANCE OF 1982** means any assessment bond issued pursuant to the provisions of Chapter 6, Article 1 of Division 23, commencing with section 61.2300 of this Code.
- (r) **SECURITY** or **SECURITY INTEREST** has the meaning set forth in section 61.1910.

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- (s) TRANSFER, when referring to real property, means any sale, exchange, gift, or lease of real property or any interest therein, whether made by the original owner, any successor in interest or legally appointed representative of the owner or made pursuant to the laws of inheritances and succession.

*(Amended 10-24-1983 by O-16065 N.S.)*

#### **§61.1904 Assessment Deferral Fund**

An Assessment Deferral Fund is hereby established in the City Treasury. All moneys appropriated by the Council for the purpose of this Division shall be deposited to the credit of that fund. All income, losses, and expenditures resulting from the provisions of this Division shall be credited or debited, as the case may be, to that fund.

*(“Assessment Deferral Fund” added 10-26-1977 by O-12196 N.S.)*

#### **§61.1905 Maturity of Assessments and Bonds**

The resolution of intention may provide for the assessments and bonds upon the real property of qualified low-income owners to be classified into longer or shorter maturities than assessments and bonds upon other real property in the assessment district.

*(“Maturity of Assessments and Bonds” added 10-26-1977 by O-12196 N.S.)*

#### **§61.1906 Rules and Regulations of City Manager — Exemption from Owner– Occupant Requirement**

The City Manager shall establish rules and regulations for the administration of this Division and shall set forth the form or contents of applications, information statements, bond agreements, notes, mortgages, and any other documents necessary or convenient for the administration of this Division; provided, however, that any exception to the requirement that the low-income owner be an occupant of the real property for which the assessment deferral is sought shall be granted only upon the express consideration and approval of the City Council.

*(“Rules and Regulations of City Manager — Exemption from Owner– Occupant Requirement” added 10-26-1977 by O-12196 N.S.)*

##### **§61.1906.1 Rules and Regulations of the City Manager Regarding Assessment Deferral Options for Low Income Property Owners**

There shall be two (2) options available to property owners applying for assessment deferral.

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- (a) The City Manager may pay the full amount of the assessment due or to become due upon applicants property.
- (b) Following the issuance of bonds, the City Manager may pay the annual bond debt obligation, as the payments become due, on behalf of the property owner for a period not to exceed two (2) total annual bond debt payments. If the property owner remains eligible for assessment deferral following the second year, the City Manager shall pay the balance of the assessment obligation. The principal amount shall become the total of the annual payments already made plus the balance of the assessment yet to be discharged, plus the appropriate interest charged on the annual bond debt obligation in accordance with section 61.1912.1 of the Municipal Code.

At any time during the two (2) year period, the property owner may reimburse the City the amount it has paid in assessment debt obligation including the interest thereon and assume full responsibility for continuing the assessment debt obligation.

*(“Rules and Regulations of the City Manager Regarding Assessment Deferral Options for Low Income Property Owners” added 10-24-1983 by O-16065 N.S.)*

#### **§61.1907 Qualifications of Low-Income Owners**

A qualified low-income owner must meet the following eligibility requirements:

- (a) Owner’s income must be within the guidelines for low-income citizens and families set by the United States Department of Housing and Urban Development, Economic Marketing Analysis Division, as adjusted annually for the San Diego Metropolitan Statistical Area.
  - (b) The value of owner’s net assets cannot exceed \$10,000.
  - (c) The real property for which assessment deferral is sought must be owner-occupied unless otherwise excepted and approved by the City Council.
- (“Qualifications of Low-Income Owners” added 10-26-1977 by O-12196 N.S.)*

#### **§61.1908 Written Explanation of Assessment Deferral Program**

The City Manager shall prepare a written explanation of the assessment deferral program in the form of a pamphlet or booklet and shall furnish sufficient copies thereof to the City Clerk for the purpose of mailing.

*(“Written Explanation of Assessment Deferral Program” added 10-26-1977 by O-12196 N.S.)*

**§61.1908.1 Same — Completed Assessment Proceedings**

In any completed assessment proceedings, the City Manager shall cause the written explanation to be distributed by such means and at such times as, in the opinion of the City Manager, is most likely to bring the assessment deferral program to the attention of interested low-income owners.

*(Amended 10-24-1983 by O-16065 N.S., retitled from "Completed 1911 Act and 1913 Act Proceedings".)*

**§61.1908.2 Same — Pending Assessment Proceedings**

In pending assessment proceedings, the City Clerk shall mail a written explanation of the assessment deferral program to all owners within the proposed assessment district. Unless otherwise instructed by the City Manager, the City Clerk shall enclose the explanation with the mailed notice of hearing on the resolution of intention. In anticipation of the adoption of a resolution of intention, the City Manager may instruct the City Clerk to separately mail the explanation in advance of the mailed notice of hearing on the resolution of intention.

*(Amended 10-24-1983 by O-16065 N.S., retitled from "Pending 1911 Act and 1913 Act Proceedings".)*

**§61.1908.3 Same— Failure to Give or Receive Explanation**

The failure of the City Manager or the City Clerk to distribute or mail written explanations of the assessment deferral program or the failure of any owner to receive the explanation shall not affect the validity of any proposed, pending, or completed special assessment proceedings or any assessment bonds issued pursuant thereto.

*("Same— Failure to Give or Receive Explanation" added 10-26-1977 by O-12196 N.S.)*

**§61.1909 Request and Application for Assessment Deferral**

Each owner interested in obtaining an assessment deferral shall file a request for an application with the City Manager. Among other things, the request shall contain:

- (a) Signer's name and mailing address.
- (b) A description sufficient to identify the real property for which assessment deferral is sought.

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- (c) A statement that the real property is located in The City of San Diego, is owned by the signer, and is or is not occupied by the signer.
- (d) A statement that signer believes he or she is eligible as a qualified low-income owner and agrees to furnish the City Manager with detailed information concerning signer's eligibility, income, and net assets.
- (e) A request for an application for assessment deferral of amounts then or thereafter due upon existing or proposed special assessments or assessment bonds.
- (f) Signature of applicant.

If upon examination of a filed request it appears that the signer may be a qualified low-income owner, the City Manager shall furnish the signer of the request with an application for assessment deferral. Among other things, the application shall contain information concerning the applicant's eligibility, income, and net assets in such detail as may be necessary for the City Manager to determine applicant's eligibility as a qualified low-income owner. The applicant shall complete the application, sign it under penalty of perjury, and file it with the City Manager.

*("Request and Application for Assessment Deferral" added 10-26-1977 by O-12196 N.S.)*

#### **§61.1909.1 Same — Approval or Denial of Application**

The City Manager shall promptly investigate and review all filed applications for assessment referrals. The City Manager may require applicant to furnish such additional information as may be necessary to determine whether applicant is a qualified low-income owner. Upon completion of the investigation and review, the City Manager shall either deny or give preliminary approval to the application. Final approval of the application shall be given by the City Manager only upon applicant's furnishing the City with the security required by Section 61.1910.

*("Same — Approval or Denial of Application" added 10-26-1977 by O-12196 N.S.)*

#### **§61.1910 Security for Assessment Deferral**

Before giving final approval to any application for assessment deferral, the City Manager shall obtain security for payment of all amounts then or thereafter to become due to the City. In the discretion of the City Manager, the security may consist of either of the following:

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- (a) The purchase by the City of the assessment bond issued or to be issued upon applicant's real property and the execution of a bond agreement between the City and the applicant pursuant to Sections 61.1911 and 61.1911.1.
- (b) The payment by the City of the special assessment due or to become due upon applicant's real property or the redemption and prepayment by the City of any existing assessment bond upon applicant's property and the execution and delivery by applicant to the City of a note and mortgage pursuant to Sections 61.1912 and 61.1912.1.

(*"Security for Assessment Deferral" added 10-26-1977 by O-12196 N.S.*)

### **§61.1911 City Purchase of Assessment Bonds**

The City Manager, for and on behalf of the City, may purchase assessment bonds issued or to be issued upon applicant's property. The purchase price shall be paid from the Assessment Deferral Fund. In pending 1911 Act proceedings, the purchase price shall be paid to the contractor or his assignee. In pending 1913 Act proceedings, the purchase price shall be paid to the person or persons to whom the bonds are awarded. In completed proceedings, the purchase price shall be paid to the bondholder. If the City Manager elects to purchase bonds to be issued in pending proceedings, prospective bondholders shall be given notice of the City's right to purchase bonds upon the real property of low-income owners as follows:

- (a) In 1911 Act proceedings, the notice inviting construction bids shall state that the City reserves and has the right to purchase the bonds from the contractor or his assignee.
- (b) In 1913 Act proceedings, the notice inviting bids for the purchase of bonds shall state that the City reserves and has the right to purchase the bonds from the person or persons to whom the bonds are awarded.

The notice shall further state that, at any time prior to delivery of the bonds to the person or persons entitled thereto, the City Manager may purchase any or all bonds to be issued upon the real property of any low-income owner whose application for assessment deferral has been finally approved prior to delivery of the bonds by the City and that the purchase price will be a sum equal to the principal amount of the bonds plus accrued interest from the date of the bonds to the date of bond delivery.

In completed proceedings, the City Manager may negotiate for and purchase bonds from any bondholder. The negotiated purchase price shall not exceed the unpaid principal amount of the bond, the amount due upon the next maturing interest coupon,

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a premium of five percent (5%) of the unmatured principal and, if any principal or interest coupon is then delinquent, the amount of all delinquent interest coupons and all penalties and costs then due the bondholder by reason of the delinquency.

*(Amended 10-24-1983 by O-16065 N.S.)*

#### **§61.1911.1 Same — Bond Agreement with Low-Income Owner**

Prior to final approval of any application for assessment deferral and to the City's purchase of an assessment bond, the applicant shall make and file a bond agreement with the City Manager. Among other things, the bond agreement shall make provision concerning payments then due or thereafter to become due upon the bond, specify the times, amounts and circumstances under which contract payments shall be due the City, and shall specify the events of default under the bond agreement and City's right to enforce the bond agreement in the event of default. The enforcement provisions may provide for enforcement of the bond by a City Treasurer's sale or a judicial foreclosure. The bond agreement may also provide for the cancellation of the agreement and the bond and the substitution of a note and a mortgage therefor pursuant to Section 61.1912 and 61.1912.1.

*("Same — Bond Agreement with Low-Income Owner" added 10-26-1977 by O-12196 N.S.)*

#### **§61.1912 Cash Payment of Special Assessments and Redemption and Prepayment of Assessment Bonds**

The City Manager, for and on behalf of the City, may pay the special assessment due or to become due upon any applicant's real property or, if there is an outstanding assessment bond on applicant's real property, may redeem and prepay the bond. Expenditures made for the purpose of paying special assessments or of redeeming and prepaying bonds shall be paid from the Assessment Deferral Fund.

*("Cash Payment of Special Assessments and Redemption and Prepayment of Assessment Bonds" added 10-26-1977 by O-12196 N.S.)*

#### **§61.1912.1 Same — Notes and Mortgages**

Prior to final approval of any application for assessment deferral and to the City's payment of a special assessment or the redemption and prepayment of an assessment bond, the applicant shall execute and deliver a note and mortgage to the City Manager.

The note shall be in a principal amount equal to the special assessment paid by the City upon applicant's real property or, if there is an outstanding bond on applicant's real property, the amount required to be paid by the City for the redemption and

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prepayment of the bond.

The principal amount of the note shall bear simple annual interest determined as follows:

- (a) Until the maturity date of the bond issued or which otherwise would have been issued on owner's property, the interest rate on the note shall be the same as the interest rate specified in the bond.
- (b) After the maturity date of the bond, the interest rate shall be the average annual interest rate thereafter earned by the City on its long-term investments.

The entire unpaid principal amount of the note, together with all interest due thereon, shall become immediately due and payable to the City upon and before any transfer or refinancing affecting the real property described in the mortgage securing the note.

The mortgage securing the note shall secure the entire unpaid principal of the note, together with all interest due thereon, and shall be such as to constitute an enforceable lien against the real property described therein. The mortgage shall provide that failure to pay the City the entire amount due upon the note constitutes an event of default, upon the occurrence of which the City may enforce the mortgage by the sale or foreclosure of the property described therein. The mortgage shall further require the owner to give prompt written notice to the City Manager of any proposed transfer of or refinancing pertaining to the real property.

*("Same — Notes and Mortgages" added 10-26-1977 by O-12196 N.S.)*

### **§61.1913 Owner Prepayment upon Bond Agreement or Note**

Where an owner has executed a bond agreement pursuant to Section 61.1911.1 or a note pursuant to Section 61.1912.1, the owner may at any time pay the City Manager all or any part of the amounts due the City upon the bond agreement or the note. All payments received by the City Manager shall be deposited in the Assessment Deferral Fund.

The City Manager shall deliver to the owner a receipted statement showing the full amount of principal, interest and other amounts due the City on the date of payment, the amount of the payment made, and the balance, if any, remaining unpaid on the date of payment. Where a partial payment is made, the payment shall first be applied to reduce the interest then due the City and any remainder applied to reduce the principal and any other amounts then due the City.

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Upon full payment to the City of a bond agreement or note, the City Manager shall execute and deliver to owner a notice of satisfaction of the agreement or note and, in the case of a note, a release of the mortgage.

*(“Owner Prepayment upon Bond Agreement or Note” added 10–26–1977 by O–12196 N.S.)*

#### **§61.1914 Rights of City under Mortgages and Bond Purchases**

Upon delivery of a mortgage to the City, the city shall have all of the rights and liens specified in the mortgage. A bond purchase by the City shall not constitute the redemption and prepayment of the bond by the City. Upon the purchase of a bond, the City shall become the owner of the bond and shall succeed to all of the rights and liens of the bondholder to enforce all payments upon the bond.

*(“Rights of City under Mortgages and Bond Purchases” added 10–26–1977 by O–12196 N.S.)*

#### **§61.1915 Supervision of Assessment Deferrals by the City Manager**

The City Manager shall provide continuing supervision of all finally approved applications for assessment deferral, all securities furnished to the City pursuant to such applications, the payment to the City of all amounts due thereunder, the financial transactions of owners affecting the securities, and owner’s continuing eligibility as a qualified low-income owner.

*(“Supervision of Assessment Deferrals by the City Manager” added 10–26–1977 by O–12196 N.S.)*

##### **§61.1915.1 Same — Recordation of Mortgages**

Upon final approval of any application providing for the delivery of a note and mortgage to the City, the City Manager shall immediately record the mortgage with the County Recorder of San Diego County.

*(“Same — Recordation of Mortgages” added 10–26–1977 by O–12196 N.S.)*

##### **§61.1915.2 Same — Financial Records**

The City Manager shall keep and maintain records showing all finally approved applications for assessment deferral, all bonds purchased by the City, all bond agreements, notes and mortgages delivered to the City, all payments made to the City, and all defaults in payment of amounts due and payable to the City. All payments received by the City Manager shall be deposited in the Assessment Deferral Fund.

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The City Manager shall establish and maintain a system for supervision of all payments due the City. Insofar as practicable, the system shall disclose all proposed, pending, or completed transfers or refinancing of any real property in which the City has a security interest.

*(“Same — Financial Records” added 10–26–1977 by O–12196 N.S.)*

### **§61.1915.3 Same — Annual Review of Status of Securities and Applicants**

Not less than once a year, the City Manager shall review all finally approved applications, the security furnished the City pursuant thereto, and the financial transactions and condition of applicant. For that purpose, the City Manager may require the applicant, either orally or in writing, to furnish information given under penalty of perjury concerning:

- (a) Any proposed, pending, or completed transfers or refinancing affecting the real property in which the City has a security interest.
- (b) Applicant’s continuing eligibility as a qualified low-income owner.

The failure or refusal of applicant to furnish such information shall be deemed an event of default, upon the occurrence of which the City may enforce its security interest.

*(“Same — Annual Review of Status of Securities and Applicants” added 10–26–1977 by O–12196 N.S.)*

### **§61.1915.4 Same — Default by Owners**

If an applicant ceases to be a qualified low-income owner or fails or refuses to make payments to the City when due, or if, in the opinion of the City Manager, it appears probable that such payments will not be made when due, the City Manager shall report such matters to the Council, together with his recommendations. Thereupon the Council may instruct the City Manager to make further efforts to collect amounts due, authorize the City Manager to compromise or write-off all or any part of the amounts due, or order the City Manager to refer the matters to the City Attorney for enforcement of the City’s security.

*(“Same — Default by Owners” added 10–26–1977 by O–12196 N.S.)*

### **§61.1916 Enforcement of Security by City Attorney**

Upon receipt from the City Manager of notice of actual or probable default upon a bond agreement or note delivered to the City, the City Attorney shall undertake such legal action as may be necessary to protect the interests of the City.

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Where an assessment bond has been purchased by the City and a bond agreement filed, the City Attorney may either make a written demand upon the City Treasurer for the sale of the property or file and maintain an action for the judicial foreclosure of the lien of the bond, all as provided in the Improvement Act of 1911.

Where a note and mortgage have been delivered to the City, the City Attorney shall either cause a trustee's sale of the property to be made or file and maintain an action for the judicial foreclosure of the mortgage.

If, in the opinion of the City Attorney, all or part of the amounts due the City are uncollectible or the estimated costs and expenses of collection would exceed the amount of the probable recovery, the City Attorney shall so report to the Council, together with his recommendations. Thereupon, the Council may instruct the City Attorney to further prosecute enforcement of the security or authorize the City Attorney to compromise or write-off all or any part of the amounts due.

*("Enforcement of Security by City Attorney" added 10-26-1977 by O-12196 N.S.)*

